IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5477 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

BHIKHABHAI DAHYABHAI PATEL

Appearance:

MR UI VYAS for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 01/08/2000

ORAL JUDGEMENT

1. The respondent Bhikhabhai D Patel was working as driver with GSRTC. While in service he remained absent from duty from 1-9-1988 to 30-9-1988 without any permission. Previously on 19 occasions respondent

remained absent from duty, and he was warned by the petitioner for his unauthorised absence. In spite of 19 earlier unauthorised absence, and in spite of warnings and cautioning, the respondent did not improve and remained absent from duty from 1-9-1988 to 30-9-1988. Because of this misconduct, disciplinary proceedings was initiated against the respondent and during the departmental proceedings, Inquiry Officer found that the charges framed against the respondent have been proved. The disciplinary authority after considering report of the Inquiry Officer and after considering record & proceedings of the case, dismissed the respondent from service. The respondent filed departmental appeal and the appellate authority has modified the penalty imposed by the disciplinary authority. Appellate authority passed an order for reinstatement in service but reduced pay of the respondent to the initial pay of the driver. The respondent was also not given pay & allowance for the period from the date of dismissal to the date of reinstatement, that is from 22-8-1990 to 30-6-1993. Being aggrieved by the order of appellate authority, respondent has taken up the matter with the government, who referred the dispute to the Industrial Tribunal, Vadodara. The Tribunal registered the reference being Reference (I.T.) No. 180/93. The Tribunal after taking evidence, and hearing parties, quashed the order of penalty imposed by appellate authority of the Corporation and directed that the petitioner be reinstated with continuity in service. However the Tribunal did not grant any relief to the respondent in respect of payment of back wages for the period from 22-8-90 to 30-6-93.

2. Learned counsel for the petitioner Mr. U.I. Vyas submitted that, unauthorised absence of the respondent caused serious disruption in the services of the Corporation. It is also submitted that on previous 19 occasions, respondent remained absent without permission and, he has also caused serious disruption in services of the Corporation. Learned counsel therefore submitted that, having regard to the past conduct of the respondent the Industrial Tribunal should not have interfered with the penalty imposed by the appellate authority of the Corporation. Learned counsel submitted that, having regard to the serious nature of misconduct the Tribunal did not pass order for back wages to the respondent. Learned counsel consequently submitted that the Industrial Tribunal however has committed an error in interfering with the penalty imposed by the disciplinary authority. It is further submitted that, since there is no irregularity in the disciplinary proceedings, and having regard to the past conduct of the respondent, the

Tribunal should not have set aside the order of disciplinary authority. Accordingly, learned counsel submitted that the Tribunal has acted without jurisdiction and therefore the judgment & award passed by the tribunal is required to be set aside.

3. Learned counsel Mr. Rathod appearing on behalf of the respondent driver submitted that the earlier misconducts have not been proved before the Labour Court even though the Industrial Court has mentioned in this behalf, but the petitioner did not adduce any evidence in this regard. It is submitted by Mr. Rathod that the Industrial Tribunal after considering both oral and documentary evidence has come to the definite finding that, the punishment imposed is disproportionate to the offence alleged to have been committed by him, and therefore the Tribunal has rightly exercised its jurisdiction in interfering with the order of penalty. Learned counsel accordingly submitted that, no error has been committed by the Industrial Tribunal in exercising discretionary power when it was satisfied that the penalty is disproportionate to the offence alleged to have been committed by the respondent.

4. I have considered the averments of both the parties. It is not in dispute that, earlier on 19 occasions respondent was also warned by the department for unauthorised absence. This aspect has not been examined by the Labour Court and by passing order the Tribunal has omitted to take in to consideration past conduct of the respondent. If the repeated unauthorised absence is not viewed seriously then, there may be indiscipline in the Corporation. Therefore, I am of the view, having regard to the past conduct of the respondent the Tribunal should not have taken such a lenient view in the matter of penalty. It appears that, the appellate authority has already passed order for reinstatement of the respondent but has imposed penalty reducing his pay to the initial stage of driver's grade. This has caused financial loss of Rs.238/- in the basic pay. The Tribunal has also passed no order regarding back wages to the respondent for the period from 20-2-1990 to 30-6-1993. Having regard to the conduct of the respondent, I am of the view that the Tribunal has taken a too lenient view in the matter of penalty. Apart from non payment of back wages the respondent deserve more punishment for repeated unauthorised absence. Accordingly, I am of the view that, withholding of five increments with cumulative effect will meet the ends of justice. Accordingly the order of the Industrial Tribunal, Vadodara is modified to the extent that the

five yearly increments of the respondent shall be withheld with cumulative effect, but there shall be continuity in his seervice, and the period between the date of dismissal and reinstatement will be treated as in service for the purposes of pension and pensionary benefits; but he will not be entitled to any salary and allowance during this period, and the pay of the respondent shall be fixed notionally during the aforesaid period.

5. With the aforesaid modification, this petition is allowed in part. Petitioner is directed to implement the present order at an early date and preferably within one month from the date of receipt of present order. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 1-8-2000 (P. K. Sarkar, J)

/vgn.